

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

PAUL SCOTT KLEIN,

Plaintiff,

v.

GREGORY BRYAN, *et al.*,

Defendants.

Case No. 3:19-cv-00300-MMD-CLB

ORDER

**I. SUMMARY**

*Pro se* Plaintiff Paul Scott Klein, who is an inmate in the custody of the Nevada Department of Corrections (“NDOC”), brings this action under 42 U.S.C. § 1983 against Defendants Gregory Bryan, Benjamin Estill, Louie Gallo, Javier Garcia, and Sean Hankerd. (ECF No. 53 at 1.) Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate Judge Carla L. Baldwin (*id.*), recommending the Court grant Defendants’ motion for summary judgment (ECF No. 46 (“Motion”)). Klein filed an objection to the R&R.<sup>1</sup> (ECF No. 54 (“Objection”).) Because the Court agrees with Judge Baldwin’s analysis as to Defendants’ Motion, Klein merely reiterates the arguments Judge Baldwin correctly rejected in the R&R in his Objection—and as further explained below—the Court will overrule the Objection, adopt the R&R in full, and grant the Motion.

**II. BACKGROUND**

The Court incorporates by reference Judge Baldwin’s recitation of the factual and procedural background provided in the R&R, which the Court adopts. (ECF No. 53 at 1-8.) Klein is proceeding on a First Amendment retaliation claim based on a cell search and an Eighth Amendment deliberate indifference to serious medical needs claim for failure to

---

<sup>1</sup>Defendants filed a response. (ECF No. 55.)

1 treat the Hepatitis-C virus (“HCV”) in Klein. (*Id.* at 1-2.)

2 Judge Baldwin recommends that the Court grant Defendants’ Motion as to Klein’s  
 3 First Amendment claim because the evidence before the Court shows that the challenged  
 4 cell search reasonably advanced the legitimate correctional goal of keeping contraband  
 5 and excess property out of cells. (*Id.* at 11-12.) Judge Baldwin notes as pertinent to her  
 6 analysis that the search yielded contraband, and that Klein’s cellmate also received a  
 7 notice of charges because of the confiscated items. (*Id.*) Judge Baldwin further  
 8 recommends that the Court grant Defendants’ Motion as to Klein’s Eighth Amendment  
 9 claim because the evidence before the Court shows that Defendants monitored and  
 10 treated Klein’s HCV, and because Klein does not proffer any admissible medical evidence  
 11 supporting his allegations that any delay in treatment caused him tangible harm  
 12 attributable to the delay. (*Id.* at 15-17.)

### 13 **III. DISCUSSION**

14 The Court’s review is de novo because Klein objects to the two principal  
 15 conclusions Judge Baldwin reaches in the R&R. (ECF No. 54.) See 28 U.S.C. § 636(b)(1)  
 16 (providing that the Court is required to “make a de novo determination of those portions of  
 17 the [R&R] to which objection is made.”) While the Court finds neither of them persuasive,  
 18 the Court briefly addresses below the two arguments Klein raises in his Objection in the  
 19 order he makes them.

#### 20 **A. Eighth Amendment**

21 Klein first argues that he proffered admissible evidence to support his claim that the  
 22 delay in HCV treatment he experienced caused him to develop cirrhosis of the liver. (ECF  
 23 No. 54 at 8-12.) But to start, the allegation that the treatment delay caused him harm is  
 24 not in his operative complaint, where Klein instead alleges that his HCV was not treated  
 25 at all. (ECF No. 24 at 4.) The evidence that Klein was treated for HCV is undisputed. (ECF  
 26 No. 53 at 14-15 (summarizing evidence).)

27 As to delay, and contrary to Klein’s argument in his Objection (ECF No. 54 at 9),  
 28 Klein’s proffered evidence does not establish that Defendants’ alleged delay in treatment

1 of his HCV caused Plaintiff to develop cirrhosis. Indeed, Klein’s statement in his affidavit  
2 that the delay of approximately a year from the time he was diagnosed with HCV until he  
3 received treatment continued to damage his liver is not supported by any medical records.  
4 (ECF No. 50-1 at 9.) And even construing Klein’s narrative in his affidavit in the light most  
5 favorable to him, it appears that Klein has unfortunately suffered from liver issues for some  
6 time—but his narrative does not establish that the delay from diagnosis to treatment of his  
7 HCV specifically caused cirrhosis. (*Id.* at 9-11.)

8 Moreover, while it is true that Klein attached several exhibits to his opposition to  
9 Defendants’ Motion that speak generally to the harm caused by delay in HCV treatment,  
10 as Judge Baldwin found, those exhibits focus generally on treatment of HCV and NDOC’s  
11 policy, but do not address whether Plaintiff specifically suffered any harm because of an  
12 alleged delay in treatment. (ECF Nos. 50-3, 50-4, 50-5, 53 at 16.) In addition, an intent to  
13 call supporting witnesses does not, on its own, constitute evidence that may be considered  
14 on summary judgment. See Fed. R. Civ. Pro. 56(c)(1)(A).

15 The Court therefore agrees with Judge Baldwin’s determination that Klein has failed  
16 to meet his burden in establishing a genuine issue of material fact as to whether  
17 Defendants’ delay in Klein’s HCV treatment caused Klein harm. See *Hallet v. Morgan*, 296  
18 F.3d 732, 744 (9th Cir. 2022) (explaining “deliberate indifference” prong); *Lemire v.*  
19 *California*, 726 F.3d 1062, 1074 (9th Cir. 2013) (requiring causation to establish deliberate  
20 indifference); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (requiring a showing of  
21 harm caused by the indifference). Accordingly, the Court adopts Judge Baldwin’s  
22 recommendation that Defendants’ Motion be granted as to Klein’s Eighth Amendment  
23 claim for deliberate indifference to a serious medical need.

#### 24 **B. First Amendment**

25 Klein next objects to Judge Baldwin’s recommendation that the Court also grant  
26 summary judgment to Defendants on his First Amendment retaliation claim, but points  
27 only to his own affidavit to argue that Judge Baldwin erred. (ECF No. 54 at 13-14.)  
28 However, Judge Baldwin addressed Klein’s affidavit in the R&R. (ECF No. 53 at 12.) And

1 Judge Baldwin explained therein that even Klein's proffered portions of his affidavit do not  
2 address the fact his cellmate was also served a notice of charges, and the cell search  
3 yielded contraband, both of which are accordingly uncontested pieces of evidence  
4 supporting Judge Baldwin's finding that there was a legitimate correctional goal behind  
5 the cell search leading to Klein's claim. (*Id.* at 11-12.) Klein's Objection is thus also  
6 unpersuasive as to his First Amendment retaliation claim.

7 In sum, the Court overrules the Objection and will accept and adopt the R&R in full.

8 **IV. CONCLUSION**


9 The Court notes that the parties made several arguments and cited to several cases  
10 not discussed above. The Court has reviewed these arguments and cases and determines  
11 that they do not warrant discussion as they do not affect the outcome of the issues before  
12 the Court.

13 It is therefore ordered that Klein's objection (ECF No. 54) to the Report and  
14 Recommendation of United States Magistrate Judge Carla L. Baldwin is overruled. The  
15 Report and Recommendation (ECF No. 53) is therefore accepted and adopted in full.

16 It is further ordered that Defendants' motion for summary judgment (ECF No. 46)  
17 is granted.

18 The Clerk of Court is directed to enter judgment accordingly—in Defendants'  
19 favor—and close this case.

20 DATED THIS 1<sup>st</sup> Day of December 2022.

21  
22  
23   
24 \_\_\_\_\_  
MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28